

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

KING COUNTY, WASHINGTON; DOW  
CONSTANTINE, in his official capacity as  
King County Executive,

Defendant.

CASE NO. 2:20-cv-00203-RJB

ORDER ON UNITED STATES'  
MOTION TO STRIKE AND  
REGARDING PROPOSED ORDER

This matter comes before the Court on the United States' motion to strike (Dkt. 79) and on issuance of a proposed order on the United States' Motion for Judgment on the Pleadings, or, in the alternative, for Summary Judgment (Dkt. 69) and Defendants King County, Washington and King County Executive Dow Constantine's (collectively "King County" or "County") Cross Motion for Summary Judgment (Dkt. 72). The Court has considered the pleadings filed regarding the motions and is fully advised.

**Motion to Strike.** For purposes of the pending motions alone, the United States' motion to strike (Dkt. 79) should be denied without prejudice. The United States moves to strike the

1 Expert Report of Thomas J. Kinton dated February 14, 2023 (Dkt. 77-5) which was filed for the  
2 first time with the County's reply to the United States' response to the County's motion for  
3 summary judgment. While the Court ordinarily does not consider new evidence filed with a  
4 reply, the report was not available until after the parties filed their motions and responses.  
5 Consideration of the report does not prejudice the United States. In any event, while the Court  
6 considered the report, it was of little help in deciding the pending motions.

7 **Proposed Order.** Oral argument on the United States' Motion for Judgment on the  
8 Pleadings, or, in the alternative, for Summary Judgment (Dkt. 69) and the County's Cross  
9 Motion for Summary Judgment (Dkt. 72) is set for March 21, 2023. Attached is a proposed  
10 order on these motions. **THIS IS A DRAFT ORDER ISSUED FOR DISCUSSION**  
11 **PURPOSES ONLY.** At oral argument, counsel should particularly address: "**D. EXECUTIVE**  
12 **ORDER VIOLATES INSTRUMENT OF TRANSFER**" (Page 15 – 20 of Proposed Order).  
13 Other argument, if any, will also be considered.

14 **IT IS SO ORDERED.**

15 The Clerk is directed to send uncertified copies of this Order to all counsel of record and  
16 to any party appearing pro se at said party's last known address.

17 Dated this 14<sup>th</sup> day of March, 2023.

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19 ROBERT J. BRYAN  
20 United States District Judge  
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